Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG KAUFHOLD, FRIEDEMANN MÜLLER, WOLFGANG BRÄUER, ULRICH LIESENFELDER and HERBERT HEIDINGSFELD

Appeal No. 2003-1029
Application No. 09/555,921

ON BRIEF

Before KIMLIN, JEFFREY T. SMITH and MOORE, ***Administrative Patent Judges***.

JEFFREY T. SMITH, ***Administrative Patent Judge.***

ON REQUEST FOR REHEARING

Appellants have filed a paper under 37 CFR § 1.197(b) requesting that we reconsider our decision of July 23, 2003, wherein we affirmed the rejection of claims 1 to 5, 7 and 9 under 35 U.S.C. § 103(a).

37 CFR § 1.197(b) provides as follows:

> Appellant may file a single request for rehearing within two months from the date of the original decision, unless the original decision is so modified by the decision on rehearing as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which rehearing is sought. See § 1.136(b) for extensions of time for seeking rehearing in a patent application and § 1.550(c) for extensions of time for seeking rehearing in a reexamination proceeding.

We have reconsidered our decision of July 23, 2003 in light of Appellants' comments in the request for rehearing, and we find no error therein. We, therefore, decline to make any changes in our prior decision for the reasons which follow.

Appellants assert that we misapprehended or overlooked the requirements of the claimed invention that require the preparation of a thermoplastic polyurethane elastomer by employing a total reactor residence time of no greater than 5 seconds. (Rehearing request

p. 4). In support of this argument, the Appellants describe the length of the total residence time for each of the cited references. (Rehearing request p. 3).

Appellants' request is clearly unpersuasive of patentability because Appellants have misinterpreted the subject matter of claim 1. Specifically, claim 1 states the components (A) and (B) are to be "homogeneously premixed in a reactor within a period of at most 5 seconds". This is contrary to Appellants' argument specifying the total reactor residence time.

Notwithstanding the Appellants' improper claim interpretation, each of the cited references describe premixing the components in a reactor for not more than 5 seconds. Kirchmeyer discloses the starting components are homogeneously mixed for 0.01 to 5 seconds. (Col. 6, ll. 28 to 33). Ullrich and Rausch disclose the components can be mixed for as little as one second. (Ullrich col. 11, ll. 47-50; and Rausch col. 6, ll. 40-43).

We have reconsidered our decision in light of all of the arguments made in the Appellants' request. However, we see no compelling reason justifying a different result. Accordingly, we decline to modify our original decision.

Time for taking action

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REHEARING DENIED

EDWARD C. KIMLIN
Administrative Patent Judge

JEFFREY T. SMITH
Administrative Patent Judge

JAMES T. MOORE
Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

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